

## Appendix A

### Texas State Library and Archives Commission

#### Terms and Conditions

All of the following terms and conditions are hereby made part of this Memorandum of Understanding (Agreement) with the Texas State Library and Archives Commission (TSLAC) by reference. Submitting a Response with a false statement is a material breach of contract and shall void the submitted Response or any resulting agreements, and the Library/Legal Entity may be prohibited from receiving future grant awards.

Agreements awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. The federal or state courts of the United State located in Texas shall have jurisdiction to hear any dispute under potential contracts and serviced may be made upon TSLAC by first class mail to its address as set forth herein.

In the events of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the following order of priority: Signed TSLAC Agreement, TSLAC Terms and Conditions, Attachments to the Agreement, other Program documents executed by Library/Legal Entity.

1. **Notices.** Unless specifically noted elsewhere in this Agreement, any written notices required under this Agreement will be either hand delivered to Library/Legal Entity's office address specified on the signature page of this Agreement or to TSLAC's Purchasing Department, 1201 Brazos Street, Room 309, Austin, Texas 78701, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address by written notification to the other party.
2. **Debarred Entity List.** Library/Legal Entity represents and warrants that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local government entity and that Library/Legal Entity is in compliance with the State statutes and rules relating to procurement and that Library/Legal Entity or its subcontractors are not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
3. **Duty to Disclose.** If circumstances change or additional information is obtained regarding any of the representations and warranties, or any other disclosure statements, provided by Library/Legal Entity subsequent to the date of this Agreement, Library/Legal Entity's duty to disclose continues through the term of this Agreement.
4. **Sales and Use Tax.** The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Library/Legal Entity may be able to claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. Excise Tax Exemption Certificates are available upon request.
5. **Observance of TSLAC Rules and Regulations.** Library/Legal Entity agrees that at all times its employees will observe and comply with all regulations when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.
6. **Non-Appropriation of Funds.** The State funds are contingent on the availability of lawful appropriates by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this Agreement; the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.
7. **No Other Benefits.** Library/Legal Entity shall have no exclusive rights or benefits other than those set forth herein.
8. **Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying.** Library/Legal Entity represents and warrants that TSLAC's payment to Library/Legal Entity and Library/Legal Entity's receipt of appropriated or other funds under this any resulting Agreement are prohibited by Section 556.005 or Section 556.008 of the Texas Government Code.
9. **Public Information Act.** Information, documentation, and other material in connection with this RFP or Agreement may be subject to public disclosure pursuant to Chapter 552.021 of the Texas Government Code (the "Public Information Act"). Any part of a submitted Response that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Library/Legal Entity.
10. **Confidentiality and Open Records.** Library/Legal Entity shall take all necessary and appropriate action to safeguard all sensitive data and other confidential information from unauthorized disclosure. Whenever the transmission of confidential information is necessary, Library/Legal Entity shall transmit the information electronically, and such electronic transmission shall be secure and the data encrypted, at a minimum, using 128 AES encryption to protect it from unauthorized disclosure.

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Notwithstanding any provisions of this Agreement to the contrary, Library/Legal Entity understands that TSLAC will comply with the Texas Public Information Act as interpreted by judicial opinions and opinions of the State's Attorney General. Within three (3) days of receipt, Library/Legal Entity shall refer to TSLAC any third party requests received directly by Library/Legal Entity for information to which Library/Legal Entity has access as a result of or in the course of performance under this Agreement. Library/Legal Entity is required to make any information created or exchanged with the state pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

- 11. Antitrust.** Library/Legal Entity represents that neither the Library/Legal Entity nor the company, corporation, partnership, or institution represented by the Library/Legal Entity, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal Antitrust Laws, nor communicated directly or indirectly the proposal to any other person engaged in such line of business.
- 12. No Conflicts.** Library/Legal Entity represents and warrants that Library/Legal Entity has no actual or potential conflicts of interest in providing services to TSLAC under this Agreement and that Library/Legal Entity's provision of services under this Agreement would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under this Agreement, and other prohibited work provisions of this Agreement, Library/Legal Entity shall, throughout the term of this Agreement, comply with and provide all of the following to TSLAC, upon request: a copy of Library/Legal Entity's most recent audit, if any, together with a full disclosure of any and all internal control weaknesses, if any; disclosure and detailed description of Library/Legal Entity's most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclosure and detailed description of any emerging irregularities, if any, that could materially affect TSLAC's interests; and disclosure and detailed description of how Library/Legal Entity determines whether Library/Legal Entity's outside auditors provide consulting or other services to Library/Legal Entity or Library/Legal Entity's clients or to TSLAC.
- 13. Specifications.**

The State will not be bound by any oral statement or representation contrary to the written specifications.
- 14. Delivery.**
  - a) Delivery shall be made during normal working hours (8am-5pm, CT), unless prior approval has been obtained from the TSLAC.
  - b) No substitutions permitted without written approval of the TSLAC's Purchasing Dept.
  - c) If delay is foreseen, Library/Legal Entity shall give written notice to the TSLAC. Library/Legal Entity must keep the TSLAC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TSLAC to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Library/Legal Entity.
- 15. Permits, Licenses.** Library/Legal Entity represents and warrants that it has obtained all necessary permits, licenses, easements, waivers, and permissions of whatsoever kind required for its performance and the performance of its subcontractors under this Agreement.
- 16. Agreement Fulfillment.** If federal or state laws or regulations or other federal or state requirements are amended and judicially interpreted so that either party cannot reasonably fulfill this Agreement, and if the parties cannot agree to an amendment that would enable substantial continuation of the Agreement, the parties shall be discharged from any further obligations under this Agreement.
- 17. Control; Ownership; Legal Proceedings.** Library/Legal Entity shall immediately notify TSLAC in writing of any actual or anticipated change in the control or ownership of Library/Legal Entity and of any legal or administrative investigations or proceedings initiated against Library/Legal Entity regardless of the jurisdiction from which such proceedings originate.
- 18. Time Limits.** Time is of the essence in the performance of this Agreement. Library/Legal Entity shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Agreement.
- 19. Inspection and Tests.** All goods will be subject to inspection and test by the State. Authorized TSLAC personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the Response or on samples taken from regular shipments. All costs shall be borne by the Library/Legal Entity in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the Library/Legal Entity or held for

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disposition at Library/Legal Entity's expense. Latent defects may result in revocation of award.

- 20. Payment.** Payment shall be made in accordance with Texas Prompt Payment Act, Chapter 2251 of Texas Government Code. TSLAC shall not pay any amounts for any purpose to Library/Legal Entity or any entity, except as expressly provided in the Agreement. TSLAC reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. TSLAC also reserves the right to refuse payments for invoices that exceed the rates specified in the Agreement.
- 21. Dispute Resolution.** Unless an applicable state statute or applicable federal law establishes another procedure for the resolution of disputes, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, as further described herein, by TSLAC and the Library/Legal Entity to attempt to resolve all disputes arising under this Agreement. Library/Legal Entity claims for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, Library/Legal Entity shall submit written notice, as required by subchapter B, to the Chief Financial Officer or the designate. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Library/Legal Entity and the TSLAC otherwise entitled to notice under the parties' Agreement. Compliance by Library/Legal Entity with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is Library/Legal Entity's sole and exclusive process for seeking a remedy for any and all alleged breaches of Agreement by TSLAC if the parties are unable to resolve their disputes under this Section. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Agreement by TSLAC nor any other conduct of any representative of TSLAC relating to this Agreement shall be considered a waiver of sovereign immunity to suit. The submission, processing and resolution of Library/Legal Entity's claim is governed by the published rules adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found in the Texas Administrative Code. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Library/Legal Entity, in whole or in part.
- 22. Gifts.** The Library/Legal Entity has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response or Agreement.
- 23. Compensation.** Pursuant to Chapter 2155.004 of the Texas Government Code, the Library/Legal Entity has not received compensation for participation in the preparation of the specifications for this RFP or Agreement.
- 24. Certification Regarding Non-Payment of Child Support.** Pursuant to Section 231.006 (d), Family Code, re: child support, the Library/Legal Entity certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- 25. Eligibility.** Under Chapter 2155.004 of the Texas Government Code, the Library/Legal Entity certifies that the individual or business entity named in this Response or Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. Library/Legal Entity represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State.
- 26. Liability for Taxes.** Library/Legal Entity represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, but not limited to, any federal, state, or local income, sales or excise taxes of Library/Legal Entity or its employees. TSLAC shall not be liable for any such taxes resulting from this Agreement.
- 27. HUBs.** Library/Legal Entity represents and warrants that it shall comply with the Historically Underutilized Business requirements of this Agreement.
- 28. Indemnification. Library/Legal Entities that are county governments are exempted from this Paragraph 28.** Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors in

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the execution or performance of the Agreement and any Purchase Orders issued under the Agreement. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 29. Debt.** Library/Legal Entity agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Library/Legal Entity shall comply with rules adopted by TSLAC under Sections 403.055, 403.0551, 2252.903 of the Texas Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State.
- 30. Executive Head of a State Agency.** Pursuant to §669.003, Government Code, the TSLAC may not enter into a Agreement with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.
- 31. State Auditor's Clause.** Library/Legal Entity understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Library/Legal Entity further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Library/Legal Entity will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Library/Legal Entity and the requirement to cooperate is included in any subcontract it awards.
- 32. Infringements.**
- a) Library/Legal Entity shall indemnify and hold harmless TSLAC and the State of Texas, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, trade and service marks, copyrights, trade secrets or other proprietary rights, and any other intellectual or intangible property rights in connection with the PERFORMANCE OR ACTIONS OF LIBRARY/LEGAL ENTITY PURSUANT TO THIS AGREEMENT. LIBRARY/LEGAL ENTITY AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. LIBRARY/LEGAL ENTITY SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY LIBRARY/LEGAL ENTITY WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND LIBRARY/LEGAL ENTITY MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
  - b) Library/Legal Entity shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Library/Legal Entity's written approval, (iii) any modifications made to the product by the Library/Legal Entity pursuant to TSLAC's specific instructions, (iv) any intellectual property right owned by or licensed to TSLAC, or (v) any use of the product or service by TSLAC that is not in conformity with the terms of any applicable license agreement.
  - c) If Library/Legal Entity becomes aware of an actual or potential claim, or TSLAC provides the Library/Legal Entity with notice of an actual or potential claim, Library/Legal Entity may (or in the case of an injunction against TSLAC, shall) at Library/Legal Entity's sole option and expense; (i) procure for the Library/Legal Entity the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TSLAC's use in non-infringing.
- 33. Patents and Copyrights.** Library/Legal Entity shall defend and indemnify TSLAC and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from TSLAC's or Library/Legal Entity's use of or acquisition of any services or other items provided to TSLAC by Library/Legal Entity or otherwise to which TSLAC has access as a result of Library/Legal Entity's performance under this Agreement, provided that TSLAC notify Library/Legal Entity of any such claim within a five (5) working days time of TSLAC's receiving notice of any such claim. If Library/Legal Entity is notified of any claim subject to this Section, Library/Legal Entity shall notify TSLAC of such claim within five (5) working days of such notice. If TSLAC determines that a conflict exists between its interests and those of Library/Legal Entity or if TSLAC is required by applicable law to select separate counsel, TSLAC shall be permitted to select separate counsel, and the actual costs TSLAC's counsel shall be paid by Library/Legal Entity. No settlement of any such claim shall be made by Library/Legal Entity without TSLAC's prior written approval.

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Library/Legal Entity shall reimburse TSLAC and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs arising from any such claim. Library/Legal Entity represents that it has determined what licenses, patents and permits are required under this Agreement and has acquired all such licenses, patents and claims.

- 34. Library/Legal Entity Assignments.** Library/Legal Entity hereby assigns an awarding agency any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States 15 U.S.C.A Section 1, et seq (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq (1967).
- 35. Default.** If the Library/Legal Entity fails to provide the goods or services contracted for according to the provisions of the Agreement, or fails to comply with any of the terms and conditions of the Agreement, the TSLAC may, upon written notice of default to the Library/Legal Entity, immediately terminate all or any part of the Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Agreement.
- TSLAC may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Agreement, or to recover damages for the breach of any amendment being derived from the Agreement. The exercise of any of the foregoing remedies will not constitute a termination of the Agreement unless the TSLAC notifies the Library/Legal Entity in writing prior to the exercise of such remedy. The Library/Legal Entity shall remain liable for all covenants and indemnities under the Agreement. The Library/Legal Entity shall be liable for all costs and expenses, including court costs, incurred by the TSLAC with respect to the enforcement of any of the remedies listed herein.
- 36. Cancellation.** The cancellation of the Agreement, under any circumstances whatsoever, shall not effect or relieve Library/Legal Entity from any obligation or liability that may have been incurred or will be incurred pursuant to this Agreement, and such cancellation by TSLAC shall not limit any other right or remedy available to the TSLAC at law or in equity.
- 37. Agreement Amendments.** No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the Agreement must be forwarded to the TSLAC Purchasing Department for prior review and approval. Only the contract administrator within the Purchasing Department or his/her designee will be authorized to sign changes or amendments.
- 38. Independent Library/Legal Entity Status.** Library/Legal Entity agrees that Library/Legal Entity and Library/Legal Entity's employees and agents have no employer-employee relationship with TSLAC. TSLAC shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation insurance payments, or any other insurance payments, nor will TSLAC furnish any medical or retirement benefits, any paid vacation or sick leave.
- 39. Publicity.** Library/Legal Entity agrees that it shall not publicize this agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of TSLAC's name in connection with any sales promotion or publicity event without the prior express written approval of TSLAC.
- 40. Severability.** If one or more provisions of this Agreement, or the application of any provision to any party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of the agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.
- 41. No Waiver.** Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TSLAC does not waive any privileges, rights defenses, or immunities available to TSLAC by entering into this Agreement or by its conduct prior to or subsequent to entering into this agreement.
- 42. Property Rights.** For purposes of this Agreement, the term "work" is defined as all reports, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Agreement. The TSLAC and Library/Legal Entity intend this Agreement to be a contract for services, and each considers the work and any and all documentation or other products and results of the services to be rendered by Library/Legal Entity to be a work made for hire. By execution of an Agreement for these services, Library/Legal Entity acknowledges and agrees that the work (and

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all rights therein) belongs to and shall be the sole and exclusive property of the TSLAC.

If, for any reason, the work would not be considered a work-for-hire under applicable law, Library/Legal Entity does hereby sell, assign, and transfer to the TSLAC, its successors and assigns, the entire right, title and interest in and to the copyright of the work and any registrations and copyright applications relating thereto, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and all to rights corresponding to the foregoing. Library/Legal Entity agrees to execute all papers and to perform such other property rights as the TSLAC may deem necessary to secure for TSLAC or its designee the rights herein assigned.

Copyrightable material made by the Library/Legal Entity for TSLAC shall be considered work-made-for-hire for TSLAC within the meaning of the copyright laws. Library/Legal Entity shall assign all rights, title and interest in such copyrightable materials to TSLAC. Should this work product prove to be patentable, Library/Legal Entity will assign all patent rights to TSLAC upon request. TSLAC shall have the right, at its discretion, to keep such work product as a trade secret.

Library/Legal Entity and Library/Legal Entity's employees shall have no rights of ownership of the Work and any documentation or other products and results of the services or any other property of TSLAC. Any property or Work not specifically scheduled in this Agreement as property of Library/Legal Entity shall constitute property of TSLAC.

In addition to compliance with the right to examination provisions of the Agreement, Library/Legal Entity must deliver to TSLAC, no later than the forty-eight (48) hours after receipt of TSLAC's written request for same, all completed or partially completed Work and any and all documentation or other products and results of the Services under such Agreement. Library/Legal Entity's failure to timely deliver such Work or any documentation or other products and results of the Services will be considered a material breach of the Agreement. With the prior written approval of TSLAC, this forty-eight (48) hour period may be extended for delivery of certain completed or partially completed Work or other such information, if such extension is in the best interest of the State of Texas or TSLAC. If Library/Legal Entity fails to deliver such Work within forty-eight (48) hours after receipt of written request for same, TSLAC may withhold all payments to Library/Legal Entity, may withhold all authorization for payment of previously approved and future invoices, may impose liquidated damages of \$1000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. During the transition from any successor of the Library/Legal Entity, TSLAC may impose liquidated damages of \$2000 rather than \$1000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. These liquidated damages are in addition to other remedies and rights that are applicable or available to TSLAC for such failure or delay under this Agreement.

- 43. Acceptance of Products and Services.** All products furnished and all services performed under this Agreement shall be to the satisfaction of TSLAC and in accordance with the specifications, terms, and conditions of this Agreement. TSLAC reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.
- 44. Deceptive Trade Practices Act (DTPA).** Library/Legal Entity represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit, and that Library/Legal Entity has not been found to be guilty of such practices in such proceedings. Library/Legal Entity certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit, and that such officers have not been found to be guilty of such practices in such proceedings.
- 45. Immigration.** Library/Legal Entity represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 ("Immigration Act"), and the Illegal Reform and Immigrant Responsibility Act of 1996 ("IRIRA") regarding employment verification and retention of verification forms for any individuals hired who will perform any labor or services under this Agreement. Library/Legal Entity also represents and warrants that it shall comply with the requirements of the Immigration Act regarding creation of the lottery system for granting visas and IRIRA which created three (3) year, ten (10) year and permanent bars to entrance into the United States.
- 46. Criminal Conviction Certification.** The Library/Legal Entity represents and warrants that Library/Legal Entity has not and Library/Legal Entity's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Library/Legal Entity has fully advised TSLAC as to the facts and circumstances surrounding the conviction. Library/Legal Entity has a continuing duty to amend, supplement or correct this representation and warranty not later than ten (10) days after discovering additional information relating to felony criminal convictions of Library/Legal Entity or any of its employees. Library/Legal Entity shall not allow any employee convicted of a felony criminal offense to perform tasks related to the Agreement without such disclosure and express permission from TSLAC.

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- 47. Subcontracting.** It is contemplated by the parties hereto that the Library/Legal Entity shall conduct the performances provided by this Agreement substantially with its own resources and through the services of its own staff. In the event the Library/Legal Entity should determine that it is necessary or expedient to subcontract for any of the performances specified herein, the Library/Legal Entity shall subcontract for such performances only after the Library/Legal Entity has transmitted to TSLAC a true copy of the subcontract the Library/Legal Entity proposes to execute with a subcontractor and has obtained TSLAC's written approval for subcontracting the subject performance in advance of executing a subcontract. The Library/Legal Entity, in subcontracting for any products or performances specified herein, expressly understands and acknowledges that in entering into such subcontracting(s), TSLAC is in no manner liable to any subcontractor(s) of the Library/Legal Entity. In no event shall this provision relieve the Library/Legal Entity of the responsibility for ensuring that the finished products and/or services rendered under all subcontracts are rendered so as to comply with all terms of this Agreement.
- 48. Assignment.** The Library/Legal Entity will not assign its rights under this Agreement or delegate the performance of its duties under this Agreement without prior written approval from TSLAC.
- 49. Accessibility.** TSLAC is required to follow Texas Administrative Code, Title 1, Part 10, Chapter 206, Accessibility and Usability of State Web Sites, Texas Administrative Code, Title 1, Part 10, Chapter 213, and the Federal Section 508, Accessibility Standards.
- 50. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Chapter 2155.003 of the Texas Government Code. The Rule outlines the ethical standards required of public purchaser, employees, and vendors who interact with public purchasers in the conduct of state business. Specifically, a TSLAC employee may not have an interest in, or in any manner be connected with a contract or RFP for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TSLAC or purchasers of other state agencies.
- 51. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters.** Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept Responses, nor award contracts to persons convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Katrina, Hurricane Rita, and subsequent disasters.
- 52. Equal Opportunity.** Library/Legal Entity represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age and disability in the performance of awards.
- 53. Drug Free Workplace.** The Library/Legal Entity shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Library/Legal Entity shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 54. Force Majeure.** Neither Library/Legal Entity nor TSLAC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any award resulting from a RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 55. Termination.** Library/Legal Entity shall have the right to terminate Agreements awarded from this Agreement upon a material breach of its terms by TSLAC, which are not cured within thirty (30) days of written notice. If Library/Legal Entity (a) terminates or suspends its business (b) becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statute or (c) becomes or subject to direct control by a trustee, receiver, or similar authority, TSLAC may, in addition to its other legal rights and remedies, terminate this Agreement on seven (7) days notice to Library/Legal Entity. Upon such termination, Library/Legal Entity will offer TSLAC a prorated refund or subscription fee.

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In the event that the Agreement is terminated for any reason, or upon its expiration, the TSLAC shall retain ownership of all associated work products and documentation obtained from the Library/Legal Entity under the Agreement.

- 56. Termination for Convenience.** TSLAC reserves the right, in its sole discretion, to terminate the Agreement on thirty (30) days written notice to the Library/Legal Entity. TSLAC also reserves the right, in its sole discretion, to terminate the Agreement immediately, with written notice to the Library/Legal Entity, if it is in the best interests of TSLAC or the State.

- 57. Termination Remedies.** Upon an Event of Default, TSLAC, without limiting any other rights or remedies it may have by law, equity, or under this Agreement, will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Agreement immediately. TSLAC's termination of this Agreement shall not limit or waive any remedies TSLAC may have for breach by Library/Legal Entity of its past, present, or future duties and obligations created by this Agreement or otherwise required by applicable law.

All remedies available to TSLAC for breach or anticipatory breach of this Agreement by Library/Legal Entity are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunction relief and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

- 58. Survival of Terms.** Termination of this Agreement for any reason shall not release the Library/Legal Entity from any liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

- 59. Supporting Documents; Right to Audit; Independent Audits.** Library/Legal Entity shall maintain and retain supporting fiscal documents adequate to ensure that claims for Agreement funds are in accordance with applicable TSLAC and State of Texas requirements. Library/Legal Entity shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Library/Legal Entity shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by TSLAC, State of Texas or their authorized representatives. Library/Legal Entity shall cooperate with auditors and other authorized TSLAC and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TSLAC or the State of Texas. By example, and not as an exclusion to other breaches or failures, Library/Legal Entity's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize TSLAC to immediately assess liquidated damages as described in Section 29 of Appendix C for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in the RFP. TSLAC may require, at Library/Legal Entity's sole cost and expense, independent audits by a qualified certified public accounting firm of Library/Legal Entity's books and records or the State's property. The independent auditing shall provide TSLAC with a copy of such audit at the same time it is provided to Library/Legal Entity. TSLAC retains the right to issue the request for Statement of Qualifications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of Library/Legal Entity or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Library/Legal Entity or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Library/Legal Entity or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by TSLAC to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) Library/Legal Entity understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) Library/Legal Entity further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) Library/Legal Entity shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Library/Legal Entity and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Library/Legal Entity relating to this Agreement.



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- 60. Limitation on Authority; No Other Obligations.** Library/Legal Entity shall have no authority to act for or on behalf of TSLAC or the State of Texas except as expressly provided for in the Agreement; no other authority, power or use is granted or implied. Library/Legal Entity may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TSLAC.
- 61. Records Retention.** Library/Legal Entity shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Agreement funds were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Library/Legal Entity shall maintain all such documents and other records relating to this Agreement and the State's property until December 31, 2021.
- 62. Insurance & Other Security. Self-insured Libraries/Legal Entities are exempt from this Paragraph 62.** Vendor represents and warrants that it will, upon five (5) days of request, provide TSLAC with current written certificates of insurance or other proof acceptable to TSLAC of the following insurance coverage:
- a) Standard Workers Compensation Insurance covering all personnel who will provide services under the Agreement;
  - b) Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate.
  - c) Professional Liability Insurance: \$500,000 minimum each occurrence limit; \$1,000,000 minimum aggregate limit.

Vendor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with 'A' rating from Best, and authorized to provide the corresponding coverage. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TSLAC. Vendor represents and warrants that it shall maintain the above insurance coverage during the term of the Agreement, and shall provide TSLAC with an executed copy of the policies immediately upon request.

- 63. Workers' Compensation Insurance Coverage. Self-insured Libraries/Legal Entities are exempt from this Paragraph 63**
- a) Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
  - b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
  - c) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the Agreement.
  - d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
  - e) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
    - 1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
    - 2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of

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coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

- f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - 1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - 2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - 3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 4) obtain from each other person with whom it contracts, and provide to the contractor:
    - i. a certificate of coverage, prior to the other person beginning work on the project; and
    - ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - 6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - 7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j) By signing this Agreement or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k) The contractor's failure to comply with any of these provisions is a breach of Agreement by the contractor which entitles the governmental entity to declare the Agreement void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.
- l) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TSLAC AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- m) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TSLAC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS'

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FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE TSLAC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 64. Workers Compensation & Employers Liability. Self-insured Libraries/Legal Entities are exempt from this Paragraph 64.** Vendor represents and warrants that it will, upon five (5) days of request, provide TSLAC with current certificates of insurance or other proof acceptable to TSLAC of the following insurance coverage: must maintain Workers' Compensation insurance coverage in accordance with statutory limits as follows:

- a) Standard Workers Compensation Insurance covering all personnel who will provide services under the Agreement
- b) Commercial General Liability Insurance, Occurrence based:
  - Bodily injury and Property Damage
  - Each Occurrence limit: \$1,000,000
  - Aggregate limit: \$2,000,000
  - Medical Expense each person: \$5,000
  - Personal Injury & Advertising Liability: \$1,000,000
  - Products/Completed Operations Aggregate Limit: \$2,000,000
  - Damage to Premise Rented to You: \$50,000
- c) Professional Liability Insurance: \$500,000 minimum each occurrence limit; \$1,000,000 minimum aggregate limit
- d) Employers Liability: Each Accident \$1,000,000
- e) Disease – Each Employee: \$1,000,000
- f) Disease – Policy Limit: \$1,000,000

Vendor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with 'A' rating from Best, and authorized to provide the corresponding coverage. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TSLAC. Vendor represents and warrants that it shall maintain the above insurance coverage during the term of the Agreement, and shall provide TSLAC with an executed copy of the policies immediately upon request.

- 65. Vendor Responsibility for Damage to Government Property.** The Library/Legal Entity shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Library/Legal Entity or its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Agreement. The Library/Legal Entity shall notify the TSLAC Project Manager in writing of any such damage within one (1) calendar day.
- 66. Library/Legal Entity Performance.** The TSLAC may monitor the performance of the Agreement issued under this RFP. All services and goods under the Agreement shall be performed at an acceptable service levels and in a manner consistent with acceptable industry standards, custom, and practice. The Library/Legal Entity will receive a paper copy of this report, as well as an e-mailed copy. The TSLAC will provide a sample of the Library/Legal Entity Performance Report upon request.
- 67. Change Management.** Library/Legal Entity shall assign only qualified personnel to this Agreement. Library/Legal Entity, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Library/Legal Entity shall provide to TSLAC prior written notice of any proposed change in key personnel involved in providing services under this Agreement. Subcontractors providing services under the Agreement shall meet the same requirements and level of experience as required of the Library/Legal Entity. No subcontract under the Agreement shall relieve the Library/Legal Entity of responsibility for ensuring the requested services are provided. If Library/Legal Entity uses a subcontractor for any or all of the work required, the following conditions shall apply: a) Library/Legal Entity's planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors. b) Subcontracting shall be solely at Library/Legal Entity's expense. c) TSLAC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors. d) Library/Legal Entity shall be the sole contact for TSLAC. Library/Legal Entity shall list a designated point of contact for all TSLAC inquiries.

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**68. Federal, State, and Local Requirements.** Library/Legal Entity shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Library/Legal Entity is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Library/Legal Entity shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Library/Legal Entity or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Library/Legal Entity shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Library/Legal Entity's omission or breach of this Section.

**69. Applicable Law & Conforming Amendments.** Library/Legal Entity must comply with all laws, regulations, requirements and guidelines applicable to a Library/Legal Entity providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. TSLAC reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout its term to incorporate any modifications necessary for TSLAC or Library/Legal Entity's compliance with all applicable State and federal laws, and regulations.

This Agreement may be amended only upon written amendments between TSLAC and Library/Legal Entity; however, this Agreement may not be amended so as to make it conflict with the laws of the State. TSLAC may issue Purchase Order Change Notices for ordering and tracking purposes consistent with this Agreement provided such Purchase Order Change Notices reference the Agreement.

**70. No Liability Upon Termination.** If this Agreement is terminated for any reason, TSLAC and the State of Texas shall not be liable to Library/Legal Entity for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Library/Legal Entity may be entitled to the remedies provided in Government Code, Chapter 2260. Library/Legal Entity or Library/Legal Entity's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under any Agreement resulting from this RFP. Library/Legal Entity or Library/Legal Entity's employees, representatives, agents and any subcontractors shall not be employees of TSLAC. Should Library/Legal Entity subcontract any of the services required in this RFP, Library/Legal Entity expressly understands and acknowledges that in entering into such subcontract(s), TSLAC is in no manner liable to any subcontractor(s) of Library/Legal Entity. In no event shall this provision relieve Library/Legal Entity of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

**71. Independent Library/Legal Entity.** Library/Legal Entity or Library/Legal Entity's employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any PO. Library/Legal Entity or Library/Legal Entity's employees, representatives, agents and any subcontractors shall not be employees of the TSLAC. Should Library/Legal Entity subcontract any of the services required, Library/Legal Entity expressly understands and acknowledges that in entering into such subcontract(s), the TSLAC is in no manner liable to any subcontractor(s) of Library/Legal Entity. In no event shall this provision relieve the Library/Legal Entity of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the specifications.

**72. Buy Texas.** Library/Legal Entity represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

**73. Texas Bidder.** Library/Legal Entity represents and warrants that if a Texas address is shown as the address of Library/Legal Entity, then Library/Legal Entity qualifies as a Resident Bidder as defined by Section 2155.444 of the Texas Government Code.

**74. Environmental Protection.** The Library/Legal Entity shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

**75. TSLAC Anti-Fraud Policy.** Library/Legal Entity represents and warrants that it has read and understood and shall comply with the Comptroller of Public Account's Anti-Fraud Policy located on the Comptroller's website at <http://www.window.texas.gov/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of this Agreement.

**76. Electronic and Information Resources Accessibility Standards.** As Required by 1 Texas Administrative Code Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only) 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility

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requirements for Electronic and Information Resources specified in 1 Texas Administrative Code Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2) Library/Legal Entity shall provide TSLAC with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Library/Legal Entity not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TSLAC with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

- 77. Provision for Direct Deposit.** The electronic funds transfer ("EFT") provisions of Texas law were codified in Section 403.016 of the Texas Government Code. Depending on eligibility under the law, certain payments from the State may be directly deposited into Library/Legal Entity's bank account or may be made by warrant. If Library/Legal Entity is eligible for direct deposit and wishes to be paid by direct deposit, Library/Legal Entity must complete the form title "Library/Legal Entity Direct Deposit Authorization" and return it as soon as possible to: Texas State Library & Archives Commission, Attention: Accounting, PO Box 12516 Austin, Texas 78711.
- 78. Disclosure of Security Breach.** Library/Legal Entity shall provide notice to the Purchasing Department, Purchasing Manager at (512) 936-2774 or [purchasing@tsl.texas.gov](mailto:purchasing@tsl.texas.gov) within twenty-four (24) hours of Library/Legal Entity's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TSLAC information ("Security Incident"). Within twenty-four (24) hours of the notification of a Security Incident, Library/Legal Entity shall provide a written report to TSLAC's Purchasing Manager detailing the circumstances of the incident, which includes at a minimum:
- a) A description of the nature of the Security Incident;
  - b) The type of TSLAC information involved;
  - c) Who may have obtained TSLAC information;
  - d) What steps Library/Legal Entity has taken or will take to investigate the Security Incident;
  - e) What steps Library/Legal Entity has taken or will take to mitigate any negative effect of the Security Incident; and
  - f) A point of contact for additional information.

Each day thereafter until the investigation is complete, Library/Legal Entity shall provide TSLAC's Purchasing Manager with a written report regarding the status of the investigation and the following additional information as it becomes available:

- a) Who is known or suspected to have gained unauthorized access to TSLAC information;
- b) Whether there is any knowledge if TSLAC information has been abused or compromised;
- c) What additional steps Library/Legal Entity has taken or will take to investigate the Security Incident;
- d) What steps Library/Legal Entity has taken or will take to mitigate any negative effect of the Security Incident; and
- e) What corrective action Library/Legal Entity has taken or will take to prevent future similar unauthorized use or disclosure.

Library/Legal Entity shall confer with TSLAC's Purchasing Manager regarding the proper course of the investigation and risk mitigation. TSLAC reserves the right to conduct an independent investigation of any Security Incident, and should TSLAC choose to do so, Library/Legal Entity shall cooperate fully by making resources, personnel, and systems access available to TSLAC and TSLAC's authorized representative(s). Subject to review and approval of TSLAC, Library/Legal Entity, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TSLAC, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TSLAC by Library/Legal Entity. If Library/Legal Entity does not reimburse such costs within thirty (30) days of TSLAC's written request, then TSLAC shall have the right to collect such costs.

**79. Information Security Requirements.**

- a) Library/Legal Entity shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to TSLAC confidential information.
- b) Access to sensitive or confidential TSLAC information. Library/Legal Entity represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard sensitive or confidential TSLAC information and to protect it from unauthorized disclosure. If communications with Library/Legal Entity necessitate the release of confidential TSLAC information, the Confidential Treatment of Information Acknowledgement form (CTIA) must be signed by each individual who will require access to or may be exposed to that information. Library/Legal Entity shall access TSLAC's systems and sensitive or confidential TSLAC information only for the purposes for which it is

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authorized.

Library/Legal Entity shall ensure that any sensitive or confidential TSLAC information in the custody of Library/Legal Entity is properly sanitized or destroyed when the information is no longer required to be retained by TSLAC or Library/Legal Entity in accordance with this Agreement. Electronic media used for storing any confidential TSLAC information must be sanitized by clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. Library/Legal Entity must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- 1) Date and time of sanitization/destruction,
- 2) Description of the item(s) and serial number(s) if applicable,
- 3) Inventory number(s), and
- 4) Procedures and tools used for sanitization/destruction.

No later than sixty (60) days from Agreement expiration or termination or as otherwise specified in this Agreement,

Library/Legal Entity must complete the sanitization and destruction of the data and provide to TSLAC all sanitization documentation.

Library/Legal Entity shall not access, process, store or transmit IRS Federal Taxpayer Information unless expressly authorized by this Agreement. Library/Legal Entity shall comply with IRS Publication 1075 requirements if it accesses, processes, stores, or transmits IRS Federal Taxpayer Information.

- c) Access to Internal TSLAC Network and Systems. As a condition of gaining remote access to any internal TSLAC network and systems, Library/Legal Entity must comply with TSLAC's policies and procedures. TSLAC's remote access request procedures will require Library/Legal Entity to submit a Remote Access Request form for TSLAC's review and approval. Remote access technologies provided by Library/Legal Entity must be approved by TSLAC's Information Security Officer. Individuals shall not access internal TSLAC network and systems from outside the United States. Individuals who are provided with access to TSLAC network or systems will be required to participate in TSLAC's Security Awareness Training on an annual basis. The State and TSLAC's Fiscal Year begins on September 1 and ends on August 31. Library/Legal Entity shall maintain records of all individuals who have completed TSLAC-required training for the duration of the individual's employment with Library/Legal Entity, plus five years. Upon TSLAC's written request, Library/Legal Entity shall provide copies of the certificates of completion for TSLAC's Security Awareness Training. On November 1<sup>st</sup> of each year, Library/Legal Entity shall submit a list to TSLAC which identifies all individuals who have current access to TSLAC network or systems as well as the most recent training completion date for each individual. TSLAC, in its sole discretion, may deny network or system access to any individual that does not complete TSLAC-required training within thirty (30) calendar days following the date of TSLAC's grant of access under this Agreement.
- d) TSLAC reserves the right to audit the security measures in effect on Library/Legal Entity's connected systems without prior warning. Library/Legal Entity must secure its own connected systems in a manner consistent with an auditable information security framework. TSLAC's audit can consist of a review of third party audit results of Library/Legal Entity's security measures (e.g., SSAE-16 Type II, ISO 27002 assessment). TSLAC also reserves the right to immediately terminate network and system connections not meeting such requirements.
- e) TSLAC data shall not be accessed from, stored at or transported to locations outside of the United States.
- f) Where applicable, encryption shall conform to or exceed Federal Information Processing Standard (FIPS) 140-2:
  - 1) Backup media containing TSLAC data shall be encrypted at all times.
  - 2) Transmission of TSLAC data across public networks shall be protected by encryption methods such as Virtual Private Network ("VPN"), Secure Shell File Transfer Protocol ("SFTPS"), or File Transfer Protocol over SSL/TLS ("FTPS").
- g) If Library/Legal Entity is a software manufacturer, then Library/Legal Entity represents and warrants that it has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software provided under this Agreement.

- 80. Transition.** Upon termination of the Agreement for any reason, Library/Legal Entity shall, in good faith and with reasonable cooperation, aid in the transition to any new agreement and provider. In accordance with this Agreement, Library/Legal Entity shall deliver to TSLAC all completed, or partially completed work and any and all documentation or other products and results of these services.